



## JUDICIAL AND ADMINISTRATIVE PROCEEDINGS

HIPAA Privacy ♦ July 2011

### *I. Supporting Policies for this Information Paper*

- A. The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule (45 CFR 164.512(e)) sets forth the requirements for uses and disclosures of protected health information (PHI) for judicial (court) proceedings and administrative (government agency) proceedings. These are referred to collectively below as legal proceedings.
- B. The Department of Defense Health Information Privacy Regulation (DoD 6025.18-R, C7.5) implements the above section of the HIPAA Privacy Rule as it relates to the Military Health System (MHS).

### *II. Definitions Associated with Uses and Disclosures of PHI for Judicial and Administrative Proceedings*

- A. Covered Entity: A health plan or a healthcare provider within the MHS that transmits any health information in electronic form to carry out financial or administrative activities related to healthcare.
- B. Disclosure: The release, transfer, provision of access to, or divulging in any other manner of PHI outside the entity holding the information.
- C. Military Health System (MHS): All DoD health plans and all DoD healthcare providers that are, in the case of institutional providers, organized under the management authority of, or in the case of covered individual providers, assigned to or employed by TMA, the Army, the Navy, or the Air Force.
- D. Protected Health Information (PHI): Information that is created or received by a covered entity and relates to the past, present, or future physical or mental health of an individual; providing payment for healthcare to an individual; and can be used to identify the individual. PHI excludes health information in employment records held by a covered entity in its role as employer.
- E. Qualified Protective Order: An order by a court or an administrative tribunal, or a stipulation by the parties to the court or administrative proceeding, that:
  - 1. Prohibits the parties from using or disclosing the PHI for any purpose other than the litigation or proceeding for which such information was requested; and

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2. Requires the return to the covered entity or destruction of the PHI (including all copies made) at the end of the litigation or proceeding.

F. Use: With respect to PHI, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

### ***III. Guidance Regarding Uses and Disclosures of PHI for Legal Proceedings***

A. Legal Proceedings are either of the following, where a covered entity is required to produce information that includes PHI:

1. An order of a court or administrative tribunal, including any order from a military judge in connection with any process under the Uniform Code of Military Justice;
2. A subpoena, discovery request, or other lawful process not accompanied by a court or administrative order.

B. Permitted Disclosures. A covered entity may disclose PHI in legal proceedings for the following purposes:

1. In response to a court order, or administrative tribunal, provided that the covered entity discloses only the PHI expressly authorized by such order; or
2. In response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal, if the covered entity receives satisfactory assurance (see paragraph III. C.) from the party seeking the information that reasonable efforts have been made:
  - a. To notify the individual who is the subject of the requested PHI that such a request has been made; or
  - b. By such party to secure a qualified protective order (see paragraph II. E.).

C. Satisfactory Assurance.

1. Satisfactory assurance of notice to the individual exists if the covered entity receives from the party seeking the PHI documentation showing:

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# TMA Privacy and Civil Liberties Office Information Paper

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- a. The requesting party made a good faith effort to give written notice to the individual (if the individual's location is unknown, a notice should be mailed to the individual's last known address);
  - b. The notice included sufficient information about the litigation or proceeding to allow the individual to raise an objection to the court or administrative tribunal; and
  - c. The time for the individual to raise objections to the court or administrative tribunal has elapsed, and:
    - i. No objections were filed; or
    - ii. All objections filed by the court or the administrative tribunal have been resolved and the disclosures being sought are consistent with that resolution.
2. Satisfactory assurance of securing a qualified protective order exists if the party seeking PHI provides the covered entity with documentation showing:
  - a. The parties to the dispute concerning the request for information have agreed to and presented the qualified protective order to the appropriate court or administrative tribunal; or
  - b. The party seeking the PHI has requested a qualified protective order from such court or administrative tribunal.

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